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## Administrative Response to Resolution 13/3 REDUX

1 message

**Linda Sue Campbell** <lsbc@gwu.edu>

Fri, Jan 24, 2014 at 7:00 PM

Reply-To: lsbc@gwu.edu

To: Barbara Porter <porter@gwu.edu>, Kelly Leon <kleon@gwu.edu>, Gloria McGhee <gmcghee@gwu.edu>, Steven Lerman <Lerman@gwu.edu>, "(Michelle) Beth Lee" <escher@gwu.edu>

Cc: Scheherazade Rehman <rehman@gwu.edu>

Bcc: Linda Sue Campbell <lsbc@gwu.edu>

As I was saying before the premature launch ( I promise to try and avoid the tab key this time):

For: President Knapp, Provost Lerman

Please find attached Senate Resolution 13/3, on the Established Procedures for Approving Any Changes to the Faculty Code or Faculty Policies That may Be Recommended by the Board of Trustees Governance Task Force.

The Senate Executive Committee has requested that I forward Senate Resolutions for your Administrative Response more often than we have previously done (once per year during the summer months) and I am doing so.

It is my understanding that both Resolutions 13/1 (Sexual Harassment Policy) and 13/2 (Conflict of Interest Policy )have been accepted by the Administration and approved as required by the Board of Trustees and I have noted this in the record.

I will be happy to annotate the record with respect to Resolution 13/3 once we receive the response to it.

Thank you.

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Sue Campbell, Coordinator  
Faculty Senate Activities

**A RESOLUTION TO RECOMMEND ADOPTION OF THE SEXUAL HARASSMENT  
AND SEXUAL VIOLENCE POLICY AND PROCEDURES (13/1)**

WHEREAS, the members of the George Washington University Faculty Senate believe that students, faculty, and staff have a right to work and study in an atmosphere free from sexual harassment and sexual violence; and

WHEREAS, the members of the George Washington University Faculty Senate recognize the importance of fostering a campus climate in which sexual harassment and sexual violence is prevented, reported, and adjudicated appropriately and fairly; and

WHEREAS, in Resolution 05/1, adopted on May 13, 2005, The Faculty Senate endorsed the Policy and Procedures for Sexual harassment which was proposed by the *Ad Hoc* University Committee on the Sexual Harassment Policy and Procedures; and,

WHEREAS, in Resolution 05/1, the Faculty Senate determined that the endorsed Sexual Harassment Policy and Procedures satisfied the following objectives: (i) prohibiting sexual harassment by any student, staff member, faculty member, or other persons in the University community; (ii) encouraging reporting of sexual harassment before it becomes severe or pervasive; (iii) identifying persons in the University Administration to whom incidents of sexual harassment may be reported; (iv) prohibiting retaliation against persons who bring sexual harassment complaints; (v) assuring confidentiality to the full extent consistent with the need to resolve complaints of sexual harassment appropriately and fairly; (vi) assuring that allegations of sexual harassment will be properly, thoroughly, and impartially addressed with appropriate regard for the interests of the persons involved and principles of fairness and due process; and, (vii) providing for appropriate corrective action to be taken against persons who have engaged in sexual harassment; and,

WHEREAS, from May 2005 to May 2012, while the Policy and Procedures for Sexual Harassment endorsed by Resolution 05/1 continued in operation, the University Administration did not inform the Faculty Senate of any incidents where the Policy and Procedures were found to have been inadequate

WHEREAS, the Obama administration, under the leadership of Vice President Biden, has taken a very proactive position on Violence Against Women<sup>1</sup> and has instructed the Department of Education, Office for Civil Rights, to provide further guidance to Universities through a "Dear Colleague Letter" under Title IX of the Civil Rights Act of 1964 and its amendments.

WHEREAS, the Dear Colleague Letter states:

*"Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime."*

WHEREAS, the "Dear Colleague Letter" further states:

*"The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.<sup>3</sup> The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.<sup>4</sup> According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.<sup>5</sup> This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.<sup>6</sup> Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.<sup>7</sup> The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities."*

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"Under the leadership of then-Senator Joe Biden, Congress recognized the severity of violence against women and our need for a national strategy with the enactment of the Violence Against Women Act in 1994. This landmark federal legislation's comprehensive approach to violence against women combined tough new provisions to hold offenders accountable with programs to provide services for the victims of such violence." [White House Fact Sheet]

And,

WHEREAS, the GWU policy adopted through resolution 05/1 has been determined by attorneys from the U. S. Department of Education, Office for Civil Rights, to be deficient under TITLE IX. Specifically, the policy is required to: (i) convey the kinds of conduct that constitutes sexual harassment, including sexual assault and other forms of sexual violence; (ii) clarify that requiring the parties to mediate is not an option for resolving sexual assault complaints; (iii) provide equitable processes for both parties, including similar and timely access to any information used at a hearing; and, (d) designate reasonable but specific time frames for the major stages of the complaint; and,

WHEREAS, The penalty for failure to comply with Title IX in the most extreme circumstances can include the termination of all or part of an institution's federal funding, including grants, subsidies, Pell grants, scholarships and other program funds from the federal government; and,

WHEREAS, in addition to the loss of federal funds, universities may be sued by those seeking redress for violations of Title IX; and,

WHEREAS, GWU administrators and counsel have expressed very strong concern about jeopardizing all GWU federal funding by deviating from the spirit of the "Dear Colleague Letter" and making the university vulnerable to lawsuits under violations of Title IX; and,

WHEREAS, the Faculty Senate Committee on Professional Ethics and Academic Freedom (PEAF) sent a proposed revision of the policy which was agreeable to the Department of Education to a wide spectrum of the GWU community requesting input which resulted in an excellent and substantive response;

WHEREAS, based on the response from the university community, PEAF recommended 21 modifications of the policy, from which the administration accepted most of the recommendation and provided satisfactory explanations for others; and,

WHEREAS, the members of the George Washington University Faculty Senate acknowledge the efforts made by the Office of the Vice Provost for Diversity and Inclusion to revise the interim policy based on recommendations provided to them by the Professional Ethics and Academic Freedom Subcommittee on the Interim Policy on Sexual Harassment and Sexual Violence; and

WHEREAS, members of the PEAFC Committee requested four additional changes from the Office of the Vice Provost for Diversity and Inclusion, but those changes were not accepted by that Office:

WHEREAS, the PEAFC Committee has concluded that those four requested changes, as described in the second resolving clause of this Resolution, are essential to guarantee fundamental fairness in the operation of the proposed SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES while allowing the University to comply fully with the "Dear Colleague Letter";

WHEREAS, the Faculty Senate recognizes that, as provided in Article IX.A. of the *Faculty Code*, the Faculty Senate plays an essential role in the governance of the University by participating with the Administration and the Board of Trustees in "the formulation of policy and planning decisions affecting the quality of education and life at the University," including policies such as the proposed SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES

**NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:**

1. Recommends that the "SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES" should be adopted as University policy; and,
2. Some Faculty express concern that the following elements are lacking in the policy:
  - a. The policy does not contain a provision requiring the University to send written notices of the Policy and Procedures at least annually to all University stakeholders (including faculty, staff, students and parents of undergraduate students), including information relevant to the issue of consent and personal responsibility for acts committed while under the influence of alcohol or drugs;
  - b. The policy does not include a provision requiring that, in hearings for sexual violence cases, the University shall make arrangements so that either (i) the parties, testifying witnesses and hearing panel members can see and hear each other through the use of live videoconferencing facilities, or (b) the parties, testifying witnesses and hearing panel members are present in the same room and can hear each other, with the Complainant having the right to testify behind a screen; and

**ATTACHMENTS:**

- i. "SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY AND PROCEDURES" .
- ii. "Dear Colleague Letter" of Office for Civil Rights, Department of Education, April 4, 2011.
- iii. Comments of Professor Theodore Barnhill, SB
- iv. Comments of Professor Nicholas Kyriakopoulos, SEAS
- v. Comments of Professor Arthur Wilmarth, Law

Faculty Senate Committee on Professional Ethics and Academic Freedom

Charles A. Garris, Jr., Chair

May 2, 2013

**Adopted, as amended, May 10, 2013**

**A RESOLUTION TO AMEND THE POLICY ON CONFLICTS OF INTEREST  
AND COMMITMENT FOR FACULTY AND INVESTIGATORS (13/2)**

**WHEREAS,** The current Policy on Conflicts of Interest and Commitment for Faculty and Investigators was approved by the Faculty Senate of The George Washington University on January 21, 2005, and by The George Washington University Board of Trustees February 11, 2005; and,

**WHEREAS,** Upon review by the Division of Grants Compliance and Oversight, Office of Policy for Extramural Research Administration, Office of Extramural Research, National Institutes of Health, officials made recommendations for amending the GW Policy in order to insure compliance with NIH's revised 2011 conflict of interest regulations; and,

**WHEREAS,** The proposed amendments appear to be minor clarifications of existing policy and do not change the substance of our approved policy; and,

**WHEREAS,** The GW Administration has requested that we expedite approval of these amendments to avoid further audit by NIH;

**NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE  
GEORGE WASHINGTON UNIVERSITY**

That the amendments shown in redline in the attached "POLICY ON CONFLICTS OF INTEREST AND COMMITMENT FOR FACULTY AND INVESTIGATORS" be accepted as GW Policy.

Faculty Senate Committee on Professional Ethics and Academic Freedom  
September 30, 2013

Adopted, October 11, 2013



**A RESOLUTION ON THE ESTABLISHED PROCEDURES FOR APPROVING ANY CHANGES  
TO THE FACULTY CODE OR FACULTY POLICIES THAT MAY BE  
RECOMMENDED BY THE BOARD OF TRUSTEES GOVERNANCE TASK FORCE (13/3)**

- WHEREAS,** The Faculty Senate has been informed by the President that, on May 17, 2013, the University's Board of Trustees adopted a resolution to establish a task force (the "Board of Trustees Governance Task Force") to conduct "a review of faculty governance over the 2013- 2014 academic year" and to consider the possibility of recommending "appropriate revisions" to the University's *Faculty Code* and "related faculty governance documents" in light of the Board of Trustees' recently adopted Strategic Plan for the University;
- WHEREAS,** The Faculty Senate recognizes that the *Faculty Code* and Faculty Policies must be adapted to meet changing conditions and needs within the University as well as emerging trends within the academic community more generally, and the Faculty Senate thus has a long history of working cooperatively with the Administration by considering and approving proposed changes to the *Faculty Code* and Faculty Policies in order to improve the quality of education and life within the University; [moved from #16 to #2]
- WHEREAS,** As provided in Article IX.A. of the *Faculty Code*, "The regular, active- status faculty shares with the officers of administration the responsibility for effective operation of the departments and schools and the University as a whole. . . . The regular, active-status faculty also participates in the formulation of policy and planning decisions affecting the quality of education and life at the University";
- WHEREAS,** Article IX.A. of the *Faculty Code* thus affirms the vital importance of shared governance of the University based on constructive dialogue and cooperation between the faculty of the University (the "Faculty") and the Administration;
- WHEREAS,** This proven model of shared governance has been developed incrementally and continuously improved at the University and is embodied in the *Faculty Code*, which was first promulgated in 1937 and has been subsequently changed on numerous occasions;
- WHEREAS,** The resolution adopted by the Board of Trustees on May 17, 2013, states that "the Board of Trustees recognizes the value of shared governance and of a strong and constructive relationship between the Faculty and the Administration;"



- WHEREAS,** The preamble to the *Faculty Code* (inside cover page) states that it provides “the statement of the rights and privileges, and the responsibilities, of the academic personnel of the University,” and several decisions of courts in the District of Columbia have recognized that the *Faculty Code* constitutes a part of a binding and enforceable contract between the University and the members of the Faculty<sup>1</sup>;
- WHEREAS,** It is a fundamental principle of contract law, recognized by courts in the District of Columbia, that a contract may not be changed without the mutual consent of both parties as well as a mutual exchange of consideration<sup>2</sup>;
- WHEREAS,** Article III, Section 1(3) of the *Faculty Organization Plan* provides that the Faculty Senate is authorized to “consider any matters of concern or interest to . . . the Faculty, and to make its recommendations or otherwise express its opinion with respect thereto, to the [Faculty] Assembly, the President, or through the President to the Board of Trustees”;
- WHEREAS,** Article III, Section 1(4) of the *Faculty Organization Plan* provides that the Faculty Senate is “the Faculty agency to which the President initially presents information and which he consults concerning proposed changes in existing policies or promulgation of new policies”;

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<sup>1</sup> See *Kyriakopoulos v. George Washington University*, 866 F.2d 438 (D.C. Cir. 1989); *Saha v. George Washington University*, 577 F. Supp. 2d 439 (D.D.C. 2008); *Brown v. George Washington University*, 802 A.2d 382 (D.C. App. 2001); *Kakaes v. George Washington University*, 663 A.2d 128 (D.C.App. 1996).

<sup>2</sup> See *Rinck v. Association of Reserve City Bankers*, 676 A.2d 12 (D.C. App. 1996); *Hershon v. Hellman Co.*, 565 A.2d 282 (D.C. App. 1989).

- WHEREAS,** Article III, Section 1 of the *Faculty Organization Plan* therefore recognizes that the Faculty Senate is authorized to act as the Faculty's elected representative in considering and consenting to the adoption or change of policies governing the Faculty's responsibilities, rights and privileges as provided in the University's governance documents;
- WHEREAS,** Article III, Section 1 of the *Faculty Organization Plan* thus makes clear that the Faculty Senate is the Faculty's elected representative and agent with which the Board of Trustees Governance Task Force must "engage" in carrying out its "review of faculty governance" pursuant to the Board of Trustees' resolution of May 17, 2013;
- WHEREAS,** Pursuant to the long-established procedures and unbroken tradition for adopting or changing the *Faculty Code* and other policies governing the Faculty's responsibilities, rights and privileges ("Faculty Policies"), the Faculty Senate, as the elected representative and agent of the Faculty, has always considered and acted on changes to the *Faculty Code* or Faculty Policies which are proposed by the Administration, the Board of Trustees or other members of the University community before such changes are submitted to the Board of Trustees;
- WHEREAS,** There is no precedent during the University's history since the adoption of the *Faculty Code* in which the *Faculty Code* has been modified without satisfying the above-described procedures of review, recommendation and approval by the Faculty Senate on behalf of the Faculty before such modification was approved by the Board of Trustees;
- WHEREAS,** While the participation of faculty members on the Board of Trustees Governance Task Force can provide the Task Force with a helpful diversity of perspectives, such participation cannot substitute for Faculty Senate participation and does not meet the standard of shared governance embraced by the *Faculty Code*;
- WHEREAS,** The substantial diligence, history, and collective wisdom embodied in the *Faculty Code* reflect the fact that the *Faculty Code* has been incrementally and sequentially modified and improved over time since its original promulgation in 1937, and there is no precedent in the history of the University for any attempt to revise the entire *Faculty Code* at one time; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE FACULTY SENATE OF  
THE GEORGE WASHINGTON UNIVERSITY**

1. The Faculty Senate expects that any changes to the *Faculty Code* or Faculty Policies recommended by the Board of Trustees Governance Task Force will adhere to

the University's long-established and unbroken tradition and procedures of shared governance, which require the Faculty Senate, as the elected representative of the Faculty, to consider and act on changes to the *Faculty Code* or Faculty Policies that are proposed by the Administration, the Board of Trustees or other members of the University community before such changes are submitted to the Board of Trustees for final action; and

2. The Faculty Senate and its Committees are pleased to offer consultation to the Task Force in discussing proposed changes to the *Faculty Code* or other faculty governance documents during the course the Task Force's work, and the Faculty Senate will undertake a careful review of the final report of the Board of Trustees Governance Task Force after that report has been delivered to the Senate, and the Senate will consider and act as expeditiously as possible on changes to the *Faculty Code* or Faculty Policies that are proposed by the Administration, the Board of Trustees, or other members of the University community before such changes are submitted to the Board of Trustees for final action.

**Committee on Professional Ethics and Academic Freedom**  
**October 28, 2013**

**Members of the Committee:**

\*Garris, Charles A., Jr., Mechanical & Aerospace Engineering  
Ben-Tzvi, Pinhas, Mechanical & Aerospace Engineering  
Biles, Brian, Health Policy  
Butler, Joan, Clinical Research and Leadership  
\*Castleberry, Michael, Special Education & Disability Studies  
Cawley, James, Prevention & Community Health Studies  
Darr, Kurt J., Health Services Management & Policy  
Frey, Jennifer Rebecca, Special Education  
Irwig, Michael, Medicine  
Kyriakopoulos, Nicholas, Electrical & Computer Engineering  
Loew, Murray, Electrical & Computer Engineering  
Malliarakis, Kate Driscoll, Nursing  
\*McDonnell, Karen, Prevention & Community Health  
Robinson, Lilien F., Art History  
Roth, Katalin, Medicine  
Teitlebaum, Joel, Health Policy  
Watkins, Ryan, Educational Leadership  
Wilmarth, Arthur E., Jr., Law  
Windsor, Richard, Prevention and Community Health

Ex-Officio (non-voting):

Vinson, Ben, Dean, Columbian College of Arts and Sciences  
Bezanson, Deborah, Associate University Librarian, Gelman Library  
Maggs, Gregory, Interim Dean, GW Law School  
Martin, C. Dianne, Vice Provost for Faculty Affairs

**A RESOLUTION TO AMEND THE POLICY ON RETAINING INCOMPLETE  
GRADES ON STUDENTS' TRANSCRIPTS (13/4)**

- WHEREAS,** It has been The George Washington University's policy to retain the indication of grades obtained after an Incomplete has been recorded on students' transcripts with an "I", and
- WHEREAS,** the council of Associate Deans has asked the Faculty Senate to see if there is a case to amend this policy to allow for removal of the 'I' grade on completion of the course when an actual grade has been reported, and
- WHEREAS,** the Executive Committee of the Faculty Senate referred this matter to the Educational Policy Committee, and
- WHEREAS,** after the Educational Policy Committee, on the information provided by the Registrar who had reviewed the policies of the Market-Basket schools on this matter, agreed to recommend implementation of the following procedure, and
- WHEREAS,** the grade recorded in the transcript should reflect the student's overall performance in the course, **NOW, THEREFORE,**

**BE IT RESOLVED BY THE FACULTY SENATE  
OF THE GEORGE WASHINGTON UNIVERSITY**

Effective with the courses taught in the fall semester 2014, the "I" indicator on students' transcripts shall be removed once an actual grade has been reported and recorded.

Faculty Senate Educational Policy Committee  
February 28, 2014

**Adopted as amended, March 21, 2014**

Weitzner, Richard, Associate General Counsel

\*Member of the Faculty Senate

**Adopted as amended by the Faculty Senate, November 8, 2013**

**A RESOLUTION TO ALERT UNDERGRADUATE STUDENTS WHO ARE DOING  
SUBSTANDARD ACADEMIC WORK EARLY IN THE SEMESTER (13/5)**

**WHEREAS,** About 81% of the entering freshmen graduate by the end of the sixth year compared to a median of 90% for GW's market basket schools, and

**WHEREAS,** 18% of the students who leave before graduating have a cumulative grade point average below 2.0, and another 11% have a cumulative grade point average between 2.0-2.49, and

**WHEREAS,** the undergraduate schools and the athletic advisors have successfully piloted a Faculty Feedback System in Banner whereby faculty can easily add notations about students' academic performance to date, which can then be passed on to advisors, **NOW, THEREFORE,**

**BE IT RESOLVED BY THE FACULTY SENATE  
OF THE GEORGE WASHINGTON UNIVERSITY**

- 1) That faculty be encouraged to assign ~~graded~~ work that is graded early in the semester but no later than the 5<sup>th</sup> week of the semester, and
- 2) that faculty be encouraged to enter information about students' academic performance, especially for those students who are doing substandard academic work, into the Faculty Feedback System in Banner as soon as this information is available.

Faculty Senate Educational Policy Committee  
February 28, 1014

Adopted as amended, March 21, 2014

**A RESOLUTION TO UPGRADE INFORMATION FOR STUDENTS SEEKING  
TO REGISTER FOR COURSES (13/6)**

**WHEREAS, students deserve adequate information before registering online, and**

**WHEREAS, faculty seek motivated and prepared students for the courses they plan to offer, and**

**WHEREAS, students may wish to know whether their own interests and major concentrations will be advanced by courses they would choose, and**

**WHEREAS, faculty teach best to students who have selected courses appropriate to their interests NOW, THEREFORE,**

**BE IT RESOLVED BY THE FACULTY SENATE OF  
THE GEORGE WASHINGTON UNIVERSITY**

**That faculty are encouraged to submit to the Registrar one of three kinds of information about each course to be offered the following semester:**

- **A draft syllabus for the upcoming term, clearly designated as tentative and subject to revision before the course begins, or**
- **a syllabus used in a previous version of the course, clearly marked as subject to change, or**
- **a form provided by the Registrar including such information as the course aims in a paragraph briefly describing what students will be expected to learn.**

**Submission may be made individually or through the faculty member's department or school.**

**Faculty Senate Educational Policy Committee  
March 25, 2014**

**Adopted as amended, April 11, 2014**